

WISCONSIN DEPARTMENT OF PUBLIC INSTRUCTION
Community Nutrition Programs
Child and Adult Care Food Program

Guidance Memorandum #4 - For Child and Adult Care Food Program Sponsoring Organizations and Independent Centers

Topic: Procurement Requirements for the Purchase of Food, Supplies, and Services

Date: May 2001

Procurement should be done in a manner to ensure maximum open and free competition and to ensure that your agency receives the best possible product or service at the lowest price. Methods of procurement apply to food, supplies, services (i.e., food service management companies, data processing services, technical services, and others), and consultants (technical, managerial, and others) used in the operation of the Child and Adult Care Food Program.

“Procurement Aggregate”

A procurement aggregate is the sum total of goods or services which can logically be purchased from one vendor during the program or calendar year. The requirement to aggregate goods on a yearly basis applies to all services where annual needs can be anticipated. This requirement does not apply to the purchase of fresh produce, meat, or frozen goods which, due to their perishability and/or rapid market fluctuations, are purchased more frequently. If purchasing a perishable item on a weekly, monthly, or bimonthly basis aggregates to more than \$100,000 for that period, they should also be procured through competitive sealed bidding or competitive negotiation. When purchases aggregate (add up) to more than \$100,000, more formal competitive methods such as sealed bidding or competitive negotiation must be employed.

For example, an institution that is able to project from past usage that it will require \$10,000 worth of canned corn, \$25,000 worth of canned peas, and \$70,000 worth of canned beans during a year could aggregate these purchases into a single canned vegetable procurement. Taking the example one step further, in addition to its need for \$105,000 worth of canned vegetables, if the institution also requires \$60,000 worth of canned juices and \$15,000 worth of canned fruits, then the institution should aggregate all its canned goods into one \$180,000 requirement.

Such aggregation would not restrict the institution to select one vendor to provide all canned goods. Instead, the institution could stipulate in its bid specifications that more than one vendor could be selected. Aggregation would, however, require the institution to conduct one formal procurement instead of many informal procurements. Small institutions with limited storage space can require a regular delivery schedule from vendors. Generally, the increased costs of delivery are more than offset by the savings of quantity purchasing.

An unnecessary division of a procurement aggregate is a violation of the intent of Federal procurement regulation and may result in the disallowance of claims for reimbursement. An exception to this rule occurs when aggregate purchases are divided for the purpose of encouraging the participation of small, minority, or other disadvantaged businesses.

Methods of Procurement

This section provides more detailed information on four methods of procurement and more specific guidance on when each method is appropriate. “Negotiation,” used in the following text, is a generic term which refers to the mutual discussion and arrangement of the terms of a transaction or agreement for the purpose of arriving at a common understanding of contract essentials (e.g., technical requirements, schedule, prices, and terms). The applicability of negotiation to the various methods of procurement will be discussed below.

Federal regulations allow four methods of procurement; small purchase procedures, competitive sealed bids, competitive negotiation and noncompetitive negotiation. These four methods are detailed below. Regardless of which method is utilized, agencies should avoid all provisions which might restrict competition or result in the agency paying higher prices because only one or a limited number of vendors can supply the needed product or service.

Small Purchases

When goods or services are under \$100,000 in aggregate value, small purchase methods may be utilized. The purchasing agency should contact at least three (3) known suppliers of the product or service and obtain competitive price quotations from them. Unlike sealed bidding, where bid prices must be considered firm and final, negotiation of prices and terms with one or more of the suppliers contacted is permitted. Whether written or telephone contact is made, all information and prices discussed should be documented in the purchasing agency's files. All suppliers must receive the same information about the purchasing agency's requirements. Finally, small purchase methods are not appropriate when a purchasing agency divides a unified contract requirement into smaller purchases in order to bring each individual purchase under \$100,000.

Competitive Sealed Bids

Procurement should be handled by competitive sealed bids when: a) the procurement value is expected to be \$100,000 or more; b) the product or service can be completely described in the agency's bid specifications; and c) the award of a contract can be made primarily on the basis of price alone. The steps to be taken in conducting a competitive sealed bid are described below.

1. Preparation of Bid Specifications

The Invitation for Bid (IFB) communicates uniform information regarding your organization's specific contracting requirement (the product or service to be procured) to all prospective bidders. The IFB developed by the Department should be used unless written permission is obtained from the Department to use a different IFB.

The product or service to be procured must be described as clearly and completely as possible in the IFB. However, procurement descriptions should not include information which could serve to restrict competition. Information which could restrict competition might include the specification of brand name products or the inclusion of nonessential product characteristics. Furthermore, all prospective bidders must be informed of any amendments or changes to the IFB.

In addition to providing functional product specifications, the IFB must also state clearly where and when bids must be submitted. The IFB must, at a minimum, allow 14 days between the public advertisement of an IFB and the deadline for submission of bids.

2. Publicizing the Procurement

After the IFB has been prepared, it is sent to suppliers of the product or service to be procured. Since it is difficult to send IFBs to all suppliers of certain products or services, it is acceptable to rotate through a list of suppliers on a predetermined basis and to include any new supplier who requests to be added to the bidder list.

In addition to mailing IFBs, a contracting agency must formally advertise the proposed procurement to other potential vendors by publishing a legal notice in area newspapers and/or in newspapers of general circulation in the State. The costs of mailing IFBs and placing newspaper advertisements are allowable and may be charged to the Child and Adult Care Food Program.

A formal advertisement must include: (1) the name, address, and telephone number of the contracting agency; (2) how to obtain the IFB; (3) a brief and general description of the contracting requirement; (4) the deadline for receipt of bids; and (5) the date, time, and place of the public bid opening.

3. Bid Opening and Contract Award

Any bids received prior to the final deadline for bid submission must be kept unopened in a secure place. Bids received after the deadline should be returned unopened to the bidders.

After the bids are publicly opened and read aloud, the official responsibility for the opening of bids should state, "The lowest bid appears to be.... we will award a contract to the lowest responsive and responsible bidder." A contract award should not be announced until the contracting agency has had time to examine the low bid for responsiveness to the IFB and to ascertain that the low bidder is a responsible firm.

For a bid to be considered responsive, it should offer a product which does not substantively deviate from the requirements of the IFB. All terms of the IFB, including price, expected quantities, delivery schedule, and quality must be considered minimum requirements, and any attempt to modify these minimum requirements (e.g., for a

bidder to offer twice a week delivery rather than the daily delivery required in the IFB) would make the bid nonresponsive. Furthermore, any attempt to make the bid price conditional or contingent upon other factors would make the bid nonresponsive unless contingent bids had been authorized in the IFB. In a competitive bid situation, the low bidder must be awarded the contract unless the bidder is found to be nonresponsive or not responsible. Such a finding must be well documented since a low bidder may bring suit if not awarded the contract. If only one bid is received after competitive solicitation, approval must be obtained from the Department prior to awarding the contract.

Competitive Negotiation

Competitive negotiation is appropriate when procurements are expected to be over \$100,000 but (a) are of such a complex and technical nature (e.g., consulting, research and development, etc.) that they cannot be fully described in bid specifications and (b) the award of the contract must be based on factors other than price alone. Please note that evaluation factors other than price can only be used when they are clearly identified in the agency's bid specifications which, in the case of competitive negotiation, is called a Request for Proposal (RFP).

In a competitive negotiation, a contracting agency requests the respondent to detail how the objective can best be attained. Therefore, in addition to a cost proposal, a respondent to an RFP also submits a technical proposal which describes the methods the respondent will employ in carrying out the project described in the RFP. It also relates these methods back to their underlying costs, as described in the respondent's cost proposal.

Unlike competitive sealed bidding, a contracting agency may negotiate price and methodology with respondents to the RFP after receiving their proposal. After negotiating with one or more of the respondents, the agency would then award a contract.

The steps in the process of actually conducting a competitive negotiation are: (1) The RFP is prepared which states the contracting agency's requirements and objectives; (2) The procurement is formally advertised and the RFPs are sent to known suppliers of the product or service. Two to six weeks after publication of the RFP (depending on the complexity of the procurement), a deadline for receipt of proposals is set; and (3) After two to six weeks of evaluation and negotiation, a contract is awarded to that respondent whose overall cost and technical proposal is most advantageous to the contracting agency.

Noncompetitive Negotiation

This method of procurement is appropriate only when: (a) public emergency such as a natural disaster prevents the delay incident to publicizing a procurement; (b) only one source of the product or service exists; or (c) after competitive solicitation, only one bid or proposal is received.

To obtain approval of funding for noncompetitive procurements, an institution must submit documentation of its attempts to solicit competition in an appropriate manner. Such documentation would include: (a) a copy of the public advertisement; (b) a copy of the IFB or Request for Proposal; (c) copies of all letters received from prospective bidders or respondents, including letters indicating a prospective bidders lack of interest in competing for the contract; and (d) any other materials which would serve to justify the institution's use of noncompetitive procurement.

All contracts over \$100,000 using noncompetitive negotiation must have the approval of the Department prior to awarding the contract.

SUMMARY OF PROCUREMENT PRACTICES

PURCHASE OF MEALS

<u>Type of Purchase</u>	<u>Procurement Method</u>	<u>Procedures to be Followed</u>
Contract with school, private or public	Vendor Agreement (see Guidance Memo 13)	1. Use <u>Child and Adult Care Food Program Vendor Agreement to Provide Meals</u> from the Department as the contract, unless an alternate contract has been approved for use.
Contract with vendor that's not a school For under \$100,000 annually	Vendor Agreement (see Guidance Memo 13)	1. Use <u>Child and Adult Care Food Program Vendor Agreement to Provide Meals</u> developed by the Department as the contract, unless an alternate contract has been approved for use. 2. Contact at least three vendors and obtain competitive price quotations. 3. Keep a log of all contacts, prices, and dates.
For \$100,000 or over annually	Competitive Sealed Bid	1. Use IFB developed by the Department as the contract unless alternate IFB has been approved for use. 2. Develop menus with serving sizes for each item and specifications describing the foods to be used in the preparation of meals. 3. Include in the IFB where and when bids must be submitted. <u>At least 14 days must be allowed between public announcement of the IFB and the deadline for submission of bids.</u> 4. Announce the bid with a formal advertisement (legal notice). In addition, send the IFB to known food service management companies in the area. A formal advertisement must include: a) the name, address, and phone number of the contracting agency ; b) how to obtain the IFB; c) a brief and general description of the contracting requirement; d) the deadline for receipt of bids; and e) the date, time and place of the public bid opening. 5. Bid opening is done publicly after the final deadline for submission of bids and the bids are read aloud. <u>All bids must remain unopened until the bid opening.</u> 6. Do not announce contract award at bid opening. Contracting agency must examine low bid to determine responsiveness to IFB. 7. Contract is awarded to low bidder, unless found to be non-responsive or not responsible.
	Competitive Negotiation	1. A Request for Proposal (RFP) is prepared which details the contracting agency's requirements and objectives. 2. The procurement is formally advertised and the RFPs are sent to known suppliers of the product or service. 3. A deadline for receipt of proposals is set for two to six weeks after publication of the RFP, depending on the complexity of the procurement. 4. Following the evaluation of all submitted RFPs, and negotiations (if needed), a contract is awarded to that respondent whose overall cost and technical proposal is most advantageous to the contracting agency.

PURCHASE OF GOODS AND SUPPLIES

<u>Type of purchase</u>	<u>Procurement Method</u>	<u>Procedures to be Followed</u>
Weekly shopping at local grocery store.	Small Purchase	<ol style="list-style-type: none">1. Use price comparisons when shopping.2. Make use of advertisements, specials, etc., whenever applicable to reduce costs.3. Maintain documentation on file that comparison pricing has been carried out.
Other supplies In aggregates not exceeding \$100,000 annually.	Small Purchase	<ol style="list-style-type: none">1. Follow "Small Purchase" procedures outlined above.
In aggregates of \$100,000 or more annually.	Competitive Sealed Bid or Competitive Negotiation	<ol style="list-style-type: none">1. Follow same procedures as outlined for purchasing meals of \$100,000 and over.